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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 12 2004

at 2 o'clock and 48 min. P.M.
WALTER A. Y. H. CHINN, CLERK

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. <u>CR04-00181 SOM</u>
)	
Plaintiff,)	INDICTMENT
)	
vs.)	[18 U.S.C. §§ 1344 and 2;
)	18 U.S.C. § 1957;
REMY AGBAYANI,	(01)	18 U.S.C. § 982]
CYNTHIA AGBAYANI,	(02)	
ROMULO MORALES,	(03)	
)	
Defendants.)	
)	

INDICTMENT

COUNTS 1-3

The Grand Jury charges that:

Background Facts

At all times material to this Indictment:

1. The defendant REMY AGBAYANI was married to Cynthia

Agbayani and resided with his wife at 174 Kokololio Place, Honolulu, Hawaii.

2. The defendant ROMULO MORALES was an employee of the Agbayanis who attempted to assist them in the "sham" sale of the Agbayanis' Kokololio Place home.

3. Norwest Mortgage and Wells Fargo Home Mortgage, both operated in Honolulu, Hawaii, and were subsidiaries of Wells Fargo Bank National Association ("Wells Fargo Bank").

4. Wells Fargo Bank was federally insured by the Federal Deposit Insurance Corporation ("FDIC").

5. From a precise date unknown, but from the mid-1990's through February 2002, the defendants REMY AGBAYANI and CYNTHIA AGBAYANI, husband and wife, owned and/or resided in the residence located at 174 Kokololio Place, Honolulu, Hawaii. During that period, ownership was frequently transferred from one to the other or held jointly by them until June 20, 2000, when a Warranty Deed was signed transferring ownership to the defendant REMY BERNARD AGBAYANI, a married man.

The Scheme to Defraud

6. Beginning in approximately February 2000 and continuing until approximately June 25, 2001, defendants REMY AGBAYANI, CYNTHIA AGBAYANI and ROMULO MORALES devised a scheme and artifice to defraud Wells Fargo Bank and to obtain monies and funds owned by, and under the custody and control of, Wells Fargo

Bank, by means of materially false and fraudulent pretenses, representations, and promises.

7. As part of the scheme and artifice to defraud and to obtain monies and funds by means of materially false and fraudulent pretenses, representations, and promises, the defendants did a number of things including the following:

(a) In or about February 2000, ROMULO MORALES signed an offer to purchase the property located at 174 Kokololio Place, Honolulu, Hawaii from REMY AGBAYANI, for \$1,745,000.

(b) Between April 2000 and July 2000, the defendants caused a fraudulent Uniform Residential Loan Application in the name of ROMULO MORALES to be submitted to Pacific Financial and Mortgage ("PFM"), to broker a mortgage loan for defendant MORALES to purchase the 174 Kokololio Place property. The loan application had various documents submitted with it and in its support including bank account statements, alleged certified public accountant profit and loss statements, and fraudulent United States individual income tax returns.

(c) On July 18, 2000, defendants REMY AGBAYANI and ROMULO MORALES met at the offices of Old Republic Title and Escrow of Hawaii, Ltd. in Honolulu, Hawaii, to sign the closing documents, including a final loan application for \$1,000,000, and a combined second mortgage or equity account in the amount of \$376,000, for loan number 4513748170.

(d) On July 19, 2000, defendant CYNTHIA AGBAYANI withdrew \$366,000 from her personal account, 64000381 at American Savings Bank by writing check no. 1589, which was originally made payable to defendant REMY AGBAYANI but changed to "cash" and used to purchase American Savings Bank cashier's check (No. 400017316), made payable to "Old Republic Escrow," which was used by defendant ROMULO MORALES as his buyer's deposit for the "sham" purchase of the Kokololio Place property.

(e) In July 2000, Norwest Mortgage and Wells Fargo Home Mortgage advanced a first mortgage in the amount \$1,000,000, and a second mortgage, Home Equity Loan no. 4513748170, in the amount \$376,000, to allow for the "sham" purchase of the Kokololio Place property by defendant MORALES. On July 18, 2000, defendants ROMULO MORALES and REMY AGBAYANI signed the necessary closing documents to cause the "sham" sale of the Kokololio Place property to defendant ROMULO MORALES.

(f) As a result of the "sham" sale of the Kokololio Place property, defendant REMY AGBAYANI received net sales proceeds in the amount of \$725,325.51.

(g) On June 25, 2001, due to nonpayment, a portion of defendant ROMULO MORALES' loan (No. 4513748170) utilized for the "sham" purchase of the Agbayani property at 174 Kokololio Place was written off by Wells Fargo Bank with a loss of \$376,000 in

principal.

8. On or about the dates set forth in tabular form below, in the District of Hawaii, the defendants did knowingly execute and attempt to execute a scheme and artifice to defraud Wells Fargo Bank and to obtain the monies and funds owned by, and under the custody and control of, Wells Fargo Bank, by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice are described in paragraphs 1 through 7, in that the defendants caused funds under the dominion and control of Wells Fargo Bank to be deposited into First Hawaiian Bank checking accounts in the name of Old Republic Title and Escrow of Hawaii, Ltd. in Honolulu, Hawaii, and subsequently released by Old Republic Title and Escrow of Hawaii, Ltd. to allegedly pay the defendant REMY AGBAYANI for his legal interest in the Kokololio Place home, though the defendants knew at the time that the documents described below were materially false when filed and the checks issued were based upon and caused by the defendants' false representations, with each such instance constituting a separate count of this Indictment:

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Count	Date	Document	Description of Document
1	7/18/00	Uniform Residential Loan Application	Application contained false employment history for defendant ROMULO MORALES and falsely stated that the Kokololio Place property would be defendant ROMULO MORALES's primary residence.
2	7/18/00	Profit and Loss Statement	Defendants fabricated a totally false profit and loss statement.
3	7/18/00	1999 Tax Return for defendant ROMULO MORALES	Defendants fabricated a false unfiled tax return for defendant ROMULO MORALES.

All in violation of Title 18, United States Code,
Sections 1344 and 2.

Counts 4-5

The Grand Jury further charges that:

Background Facts

At all times material to this Indictment:

9. The defendant CYNTHIA AGBAYANI obtained an Equity Line Loan in the amount of \$379,750 (Account No. 451-4333853) from Wells Fargo Bank, through a telephone from Honolulu, Hawaii to Los Angeles, California..

10. Wells Fargo Bank was federally insured by the Federal Deposit Insurance Corporation ("FDIC").

The Scheme to Defraud

11. On or about November 13, 2000, and continuing

until approximately July 5, 2001, defendant CYNTHIA AGBAYANI devised a scheme and artifice to defraud Wells Fargo Bank and to obtain monies and funds owned by, and under the control of, Wells Fargo Bank, by means of materially false and fraudulent pretenses, representations, and promises.

12. As part of the scheme and artifice to defraud and to obtain monies and funds by means of materially false and fraudulent pretenses, representations, and promises, defendant CYNTHIA AGBAYANI did a number of things including the following:

(a) On or about November 13, 2000, defendant CYNTHIA AGBAYANI obtained an Equity Line Loan from Wells Fargo Bank in the amount of \$379,750 (Account No. 451-4333853). Defendant CYNTHIA AGBAYANI used these funds for her own benefit.

(b) On February 28, 2001, defendant CYNTHIA AGBAYANI made payments on the Equity Line Loan (Account No. 451-4333853) totaling \$300,000 in the form of two checks. The first check was a cashier's check (No. 400087490) in the amount of \$25,000 purchased at American Savings Bank. The second check was made payable to defendant CYNTHIA AGBAYANI in the amount of \$275,000, drawn on American Savings Bank Account No. 45750540 in the name of Kamaaina Gold and Silver Exchange, and which appeared to have been signed by "R. Morales" (not charged

here). Defendant CYNTHIA AGBAYANI had endorsed this second check to Wells Fargo Bank as payment on the Equity Line Loan (Account No. 4514333853). The check was drawn on an account the defendant knew had insufficient funds to guarantee payment.

13. On or about the dates set forth below, in the District of Hawaii, the defendant did knowingly execute and attempt to execute a scheme and artifice to defraud Wells Fargo Bank and to obtain the monies and funds owned by, and under the custody and control of, Wells Fargo Bank, by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice is described in paragraphs 9 through 12, in that the defendant caused funds under the dominion and control of Wells Fargo Bank to be made available to her in an Equity Line Loan and by making fraudulent payments on that loan, by presenting fraudulent checks which were later dishonored by American Savings Bank which the defendant knew at the time they were presented to Wells Fargo, were not supported by funds to guarantee their payment, with each such instance constituting a separate count of this Indictment:

Count 4

14. On or about February 28, 2001, in the District

of Hawaii, the defendant CYNTHIA AGBAYANI, as a result of the fraudulent payments described in paragraph 12 above, requested, and was granted, an additional advance of \$275,000 on her Equity Line Loan (Account No. 451-4333853). On March 13, 2001, Wells Fargo Bank wire transferred \$275,000 to defendant CYNTHIA AGBAYANI's Account No. 64000381 at American Savings Bank and those funds were used by her for her own purposes.

All in violation of Title 18, United States Code, Section 1344.

Count 5

15. On or about July 5, 2001, in the District of Hawaii, the defendant CYNTHIA AGBAYANI, attempted to make a payment on her Wells Fargo Equity Line Loan by presenting a counterfeit American Savings Bank check no. 102, in the amount of \$11,826.62, allegedly drawn on Account No. 0660727607, which was "authorized" for payment by the defendant when in truth and fact the defendant CYNTHIA AGBAYANI knew there was no such account at American Savings Bank.

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All in violation of Title 18, United States Code,
Section 1344.

Counts 6-12

The Grand Jury further charges that:

16. On or about the following dates set forth in tabular form below, in the District of Hawaii, the defendants REMY AGBAYANI and CYNTHIA AGBAYANI, with each aiding and abetting the other, did knowingly engage and attempt to engage in a monetary transaction involving criminally derived property of a value greater than \$10,000.00, which is derived from specified unlawful activity, that is, bank fraud, in violation of Title 18, United States Code, Section 1344, with each transaction representing a separate count of this Indictment:

Count	Date	Transaction	Amount
6	7/21/00	Defendant REMY AGBAYANI used funds from the "sham" sale of the Kokololio Place property to purchase cashier's check (No. 1558233) in the amount of \$715,325.51 at First Hawaiian Bank.	\$715,325.51
7	7/21/00	Defendant REMY AGBAYANI deposited \$215,325.51 from the \$715,325.51 First Hawaiian Bank cashier's check (No. 1558233) into American Savings Bank account (No. 67721322) owned or controlled by defendant CYNTHIA AGBAYANI.	\$215,325.51

Count	Date	Transaction	Amount
8	7/21/00	Defendant REMY AGBAYANI deposited \$200,000.00 from the \$715,325.51 First Hawaiian Bank cashier's check (No. 1558233) into American Savings Bank account (No. 32247927) owned or controlled by defendant CYNTHIA AGBAYANI.	\$200,000.00
9	7/21/00	Defendant REMY AGBAYANI deposited \$300,000.00 from the \$715,325.51 First Hawaiian Bank cashier's check (No. 1558233) into American Savings Bank account (No. 64000381) owned or controlled by defendant CYNTHIA AGBAYANI.	\$300,000.00
10	7/24/00	Defendant CYNTHIA AGBAYANI withdrew \$100,000.00 from American Savings Bank account (No. 64000381) and deposited the \$100,000.00 into her American Express Investment Management Account (No. 146097621021).	\$100,000.00
11	9/7/00	Defendant CYNTHIA AGBAYANI withdrew \$99,000.00 from her American Express Investment Management Account (No. 146097621021) with check no. 2021 to open a new American Savings Bank account (No. 00905-53460) in the name of defendant CYNTHIA AGBAYANI as Trustee for Remeeliz Agbayani.	\$99,000.00

Count	Date	Transaction	Amount
12	9/12/00	Defendant CYNTHIA AGBAYANI withdrew \$132,000.00 from American Savings Bank account (No. 67721322) with check no. 231 to purchase American Savings Bank cashier's check made payable to "Old Republic" for purchase of real properties located at 648 and 686 Moaniala Street, Honolulu, Hawaii.	\$132,000.00

All in violation of Title 18, United States Code, Section 1957 and 2.

Count 13

The Grand Jury further charges that:

A. As the result of committing one or more of the offenses in violation of 18 U.S.C. § 1344 alleged in Counts 1-3 of this Indictment, defendants REMY AGBAYANI, CYNTHIA AGBAYANI and ROMULO MORALES shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(2)(A), all property constituting, or derived from, proceeds the defendants obtained directly or indirectly as the result of such violations, including but not limited to the following:

1. A sum of money equal to \$725,325.51 in United States currency, representing the amount of proceeds obtained as a result of the offenses listed in Counts 1-3, for which the defendants are jointly and severally liable.

2. The fee simple interest in the real property located at 648 Moaniala Street in Honolulu, Hawaii, titled in the name of Tyna Lynn Chang, an alias used by defendant CYNTHIA AGBAYANI, and more specifically identified as Tax Map Key No. (1) 3-7-022-005, together with all improvements, appurtenances, fixtures, attachments and easements.

3. \$243,050.26 in United States currency seized on September 16, 2003, and September 22, 2003, from American Savings Bank checking account (No. 8000394051) and savings account (No. 3001034918), both held in the name of Reanne N. Agbayani.

B. As the result of committing the offense in violation of 18 U.S.C. § 1344 alleged in Count 4 of this Indictment, defendant CYNTHIA AGBAYANI shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(2)(A), all property constituting, or derived from, proceeds defendant CYNTHIA AGBAYANI obtained directly or indirectly as the result of such violation, including but not limited to the following:

1. A sum of money equal to \$275,000.00 in United States currency, representing the amount of proceeds obtained by defendant CYNTHIA AGBAYANI as a result of the offense listed in Count 4.

C. As a result of committing one or more of the offenses in violation of 18 U.S.C. § 1957 alleged in Counts 6-12 of the Indictment, defendants REMY AGBAYANI and CYNTHIA AGBAYANI

shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(1), all property, real or personal, involved in such offenses, and all property traceable to such property, including but not limited to the following:

1. A sum of money equal to \$715,325.51 in United States currency, representing the amount of proceeds obtained as a result of the offenses listed in Counts 6-12, for which the defendants REMY AGBAYANI and CYNTHIA AGBAYANI are jointly and severally liable.

2. The fee simple interest in the real property located at 648 Moaniala Street in Honolulu, Hawaii, titled in the name of Tyna Lynn Chang, an alias used by defendant CYNTHIA AGBAYANI, and more specifically identified as Tax Map Key No. (1) 3-7-022-005, together with all improvements, appurtenances, fixtures, attachments and easements.

D. If any of the above-described forfeitable property, as a result of any act or omission of the Defendants --

1. cannot be located upon the exercise of due diligence;
2. has been transferred or sold to, or deposited with, a third person;
3. has been placed beyond the jurisdiction of the court;
4. has been substantially diminished in value; or
5. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b) and 28 U.S.C. § 2164(c), to seek forfeiture of any other property of the Defendants up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Sections 982, 1344 and 1957.

DATED: May 12, 2004, at Honolulu, Hawaii.

A TRUE BILL

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FOREPERSON, GRAND JURY

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United States v. Remy Agbayani, et al.;
Cr. No.
"Indictment"